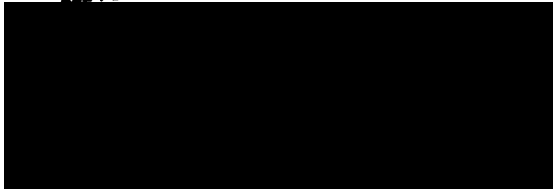


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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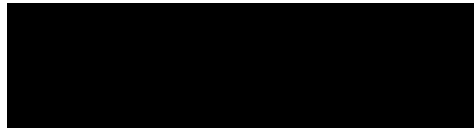
Office: VERMONT SERVICE CENTER

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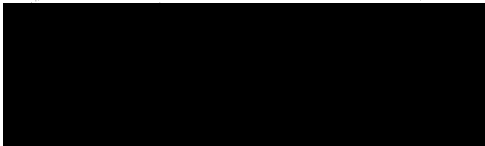
Petitioner:

Beneficiary:



PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 44-year old native and citizen of Jamaica who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that he is a person of good moral character.

On appeal, counsel submits a statement and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

On the Form I-360, the petitioner indicated that he last entered the United States without inspection on or about January 1996. The evidence on the record indicates that the petitioner wed his naturalized citizen wife, [REDACTED] on December 31, 1994 in Jamaica. The evidence further indicates that the petitioner's wife filed an I-130 petition on the petitioner's behalf. The Form I-130 petition was approved. The petitioner subsequently filed an application for adjustment of status that was denied when the petitioner and his wife failed to appear for an adjustment interview.

The petitioner was placed into removal proceedings on March 15, 2002 and was given a final order granting him voluntary departure on July 25, 2002. On June 19, 2002, the petitioner filed a self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Finding the evidence insufficient to establish that the petitioner had been married to a lawful permanent resident or United States citizen, that they had resided together, that the petitioner had been battered by, or subjected to extreme cruelty by the citizen spouse, the director issued a request for additional evidence on January 6, 2003. The petitioner's counsel responded initially by requesting and additional sixty days in which to respond. The request was granted. The petitioner responded to the request for additional evidence.

In a decision dated September 4, 2003, the director denied the petition, finding that the petitioner had failed to establish that he was a person of good moral character. The director noted that the petitioner had been convicted of drug possession and carrying a concealed weapon.

On appeal, counsel for the petitioner asserts that neither of the petitioner's convictions is for a crime of moral turpitude, therefore, they should not be considered as grounds for denying the petitioner ineligible for lack of good moral character.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (9)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30

grams or less of marihuana); if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period.

Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) provides, in pertinent part, that an alien is ineligible to receive visas and for admission if the alien is convicted of, or admits having committed, or who admits committing acts which constitute the essential elements of a violation of "any law or regulation of a State, the United States . . . relating to a controlled substance."

According to the evidence on the record, the petitioner was arrested on November 16, 1983 in Queens on a felony charge for the criminal possession of five pounds of marijuana. He was convicted upon a guilty plea on May 1, 1984 (Queens criminal court docket # [REDACTED]). He was sentenced to a \$250 fine or 30 days in custody. He paid the fine. According to the evidence on the record, the petitioner was arrested on March 16, 1987 by the Metro-Dade Police Department, Florida and was charged with carrying a concealed weapon – firearm, a felony charge (agency case # [REDACTED]). The petitioner was placed in a pretrial diversion program, and completed the program on October 29, 1987.

On appeal, counsel for the petitioner asserts that the petitioner's marijuana conviction was recently vacated by the Criminal Court of the City of New York, Queens County; therefore, it should not be considered. In review, the petitioner has failed to establish that he is a person of good moral character on the basis of his conviction for criminal possession of marijuana.

The definition of "conviction" is found in section 101(a)(48)(A) of the Act, 8 USC § 1101(a)(48)(A). The definition of conviction does not include any exception for vacated convictions. A vacated conviction remains a conviction when interpreting the immigration laws. *See Renteria-Gonzalez*, 322 F.3d 804 (5TH Cir. 2002); *see also Discipio v. Ashcroft*, 200 WL 912597 (5th Cir. 2004).

Beyond the decision of the director, the petitioner has failed to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(E). The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi). In the instant case, evidence of abuse or extreme cruelty was limited to the petitioner's testimony and the assertions of counsel. It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, counselors, or social workers. The petitioner failed to submit evidence that he sought psychological or medical treatment for any abuse he endured. He did not submit evidence that he sought refuge in a shelter or elsewhere. He did not obtain an order of protection against his wife or take other legal steps to end the abuse. He did not provide CIS with photographs of injuries. He did not allege he sustained any injuries. His affidavits are insufficiently specific as to the exact harm he suffered from his wife. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.